

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	Docket#
LIGHTING & SUPPLIES, INC., :	14-cv-04344-JBW-JO
:	
Plaintiff, :	
:	
- versus - :	U.S. Courthouse
:	Brooklyn, New York
:	
SUNLITE USA CORPORATION, :	
:	December 9, 2014
Defendant :	
-----X	

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

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1 THE CLERK: Civil Cause for a Status
2 Conference, Lighting & Supplies, Inc. v. Sunlite USA
3 Corporation, docket number 14-cv-4344.

4 Counsels, please state your appearances for the
5 record, starting with the plaintiff.

6 MR. ZILBERBERG: Good afternoon, your Honor.

7 Mendel Zilberberg of Mendel Zilberberg &
8 Associates, with my associate, Sam Karpel and co-counsel,
9 Bernard Malina, representing plaintiffs.

10 THE COURT: Good afternoon to you all. And you
11 have your clients with you?

12 MR. ZILBERBERG: Yes, I have, Mordechai Kohn,
13 who is the principal of Lighting & Supplies, Inc. and his
14 sales manager, Joel Gross.

15 THE COURT: Okay. Welcome to you all.

16 MR. LEHMAN: Arthur Lehman for defendants.

17 THE COURT: Good afternoon.

18 MR. LEHMAN: And Mr. Mikail, the defendant had
19 been participating upstairs by phone. He lives in Los
20 Angeles.

21 THE COURT: Okay. All right, folks, how can I
22 help you?

23 MR. ZILBERBERG: Do you want me -- can I speak
24 first?

25 MR. LEHMAN: Yes, please.

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1 MR. ZILBERBERG: This case started with a
2 trademark infringement.

3 THE COURT: I know what the case is about. I
4 am just --

5 MR. ZILBERBERG: Oh.

6 THE COURT: I don't know what happened with
7 Judge Weinstein or why he sent you here.

8 MR. ZILBERBERG: Okay.

9 THE COURT: So can you fill me in on that?

10 MR. ZILBERBERG: So what happened was this.
11 Essentially, we were at a fork in the road and the fork
12 in the road was either the Judge did not want to deal
13 with preliminary injunctive relief and final injunctive
14 relief separately. He said either try to work out a
15 settlement, of which many of the pieces were already
16 agreed to in front of Judge Weinstein and then I guess
17 for the final details in working that out, we -- he said
18 please come to this courtroom and see if you can get it
19 worked out. If you don't get it worked out, then you are
20 going to come back to me and we're going to proceed with
21 the litigation.

22 THE COURT: Okay.

23 MR. ZILBERBERG: So --

24 THE COURT: So what remains in dispute about a
25 settlement?

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1 MR. ZILBERBERG: Okay. So I don't know that we
2 have anything in dispute, frankly.

3 THE COURT: And by the way, to the extent this
4 is a settlement discussion, right now we're on the
5 record. Would you all prefer to go off the record to
6 talk about settlement?

7 MR. ZILBERBERG: No, I'm happy to stay on.

8 MR. LEHMAN: It's fine to stay on the record.

9 THE COURT: Okay. So what --

10 MR. ZILBERBERG: Okay. So what we -- I'm going
11 to go on points and they may not be logically in sequence
12 but in terms of the product that was sold under the
13 Sunlite label, I had suggested to Judge Weinstein that
14 rather than us even having to get lists, I don't want to
15 have to become the policeman in this case. I am
16 perfectly happy that counsel for the defendants go over
17 all of their FedEx and UPS records or all their shipping
18 records and make an undertaking that a letter is sent to
19 everyone of the purchasing customers.

20 Now I think where we got sent up here was that
21 I asked that the attorneys -- and I'm not the
22 intellectual property attorney really, Mr. Malina is,
23 would get together with Mr. Lehman and they would try to
24 craft a letter that would be -- and if they can't, then
25 we would come back but I would leave it to them. I don't

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1 know that on the fly it's appropriate really to craft
2 that letter.

3 THE COURT: Well, I'm sure if you're agreed on
4 the basics, you're going to work out things like drafting
5 a letter. So what remains to be resolved?

6 MR. ZILBERBERG: That's number one. Number two
7 is we have retained an expert who will give a
8 recommendation as to how that information that they have
9 on the Internet to be pulled off and taken down because
10 neither I nor Mr. Lehman have that expertise.

11 THE COURT: You mean to take down from their
12 Web site and from --

13 MR. ZILBERBERG: Not only the Web site but
14 where else it is. There's other links and URLs and
15 things --

16 THE COURT: I see.

17 MR. ZILBERBERG: How to really clean it and
18 Judge Weinstein said, look as long as what they're asking
19 for is reasonable because they've infringed and so be it.
20 Now --

21 THE COURT: Sorry to interrupt. I just want to
22 sort of take it step by step to see what's in dispute and
23 what's not. So, Mr. Lehman, you're in principle in
24 agreement with the idea of taking down the information
25 wherever it may be?

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1 MR. LEHMAN: It depends on what's involved. I
2 mean we -- in our papers on this motion we submitted that
3 they had asked for an injunction. We'd take it down from
4 everyone's Web site.

5 THE COURT: Uh-hum.

6 MR. LEHMAN: We pointed out we can't control
7 Google.

8 THE COURT: Right.

9 MR. LEHMAN: And we don't know what other Web
10 sites have it. It's on the Secretary of State's Web site
11 because it's a corporate name --

12 THE COURT: Right.

13 MR. LEHMAN: -- but if it's reasonable, we'll
14 take a --

15 THE COURT: Well, look --

16 MR. LEHMAN: -- we do whatever we can do.

17 THE COURT: -- what you're trying to accomplish
18 is nobody looking for your product and stumbling on a
19 link to their Web site --

20 MR. ZILBERBERG: Right.

21 THE COURT: -- buys from them, right?

22 MR. ZILBERBERG: That is correct.

23 THE COURT: So in theory, even if there's
24 someone else linked, you know, with a link on their Web
25 site as a third-party, it's not going to be a problem for

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1 you unless it links to them and as long as the
2 information on the sites they control is accurate.

3 MR. ZILBERBERG: You know, when I hear from my
4 client and obviously we said it in court in front of
5 Judge Weinstein, so I'm not testifying here, you know, it
6 was said under oath, that as recently as yesterday that
7 link or those linkages were not gone. I'm going to have
8 an expert look into it.

9 THE COURT: Right. So all I am saying is the
10 link by itself doesn't hurt you if nobody can act on it,
11 right?

12 MR. ZILBERBERG: But if they get Sunlite USA,
13 which is what their corporation name is and by looking up
14 Sunlite, they get that corporation had an address and
15 he's now running a different corporate, Spotlight USA,
16 and therefore get to that company in sales, they're
17 really trading off of our currency, so it's --

18 THE COURT: Yeah, but that's easy enough.
19 Anything that gets linked to them from -- you know, via
20 the Sunlite name can easily be redirected to you. I
21 think that's easy to accomplish.

22 MR. ZILBERBERG: That's what I am saying. It's
23 a redirect.

24 THE COURT: All right.

25 MR. ZILBERBERG: That's what I need an expert

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1 for. Frankly, your Honor, I didn't have a course of this
2 in law school. I just don't know this.

3 THE COURT: Okay.

4 MR. ZILBERBERG: That's why we've retained an
5 expert --

6 THE COURT: Well, this sounds like something
7 you'll easily work out. Okay.

8 MR. ZILBERBERG: This is obviously that they
9 can't sell anything with the Sunlite name that they have
10 to destroy all -- other than business records, that they
11 have to destroy all product and packaging and that they
12 can't represent themselves as being anything with the
13 word Sunlite.

14 MR. LEHMAN: It's a packaging issue. The
15 products are light bulbs and they don't say Sunlite on
16 the light bulbs. So it's taking them out of boxes that
17 say Sunlite and putting them into a different box.

18 THE COURT: And you destroy the packaging.

19 MR. LEHMAN: Yes.

20 THE COURT: Okay.

21 MR. ZILBERBERG: I'm saying --

22 MR. LEHMAN: And promotional material.

23 MR. ZILBERBERG: Promotional material, whatever
24 that may be.

25 THE COURT: Yes.

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1 MR. ZILBERBERG: That's -- did I miss anything?

2 UNIDENTIFIED SPEAKER: No, no.

3 THE COURT: It sounds like you've got an
4 agreement.

5 MR. ZILBERBERG: Yeah, this was not --

6 THE COURT: So what are you looking for me to
7 help you with, if anything?

8 MR. ZILBERBERG: I think we need an order. We
9 need something drafted and we need an order and we need a
10 signature from the Court on it. And that was something
11 that it will be so ordered by the Court.

12 THE COURT: Okay. So let me leave it to
13 counsel to go back to your offices, draft something up,
14 exchange drafts and get back to me, what, in two weeks?
15 Is that going to work?

16 MR. LEHMAN: I think you want it sooner.

17 THE COURT: Whenever you want.

18 MR. LEHMAN: You can get it back --

19 THE COURT: You put whatever deadline you want
20 on it.

21 MR. ZILBERBERG: One week?

22 MR. LEHMAN: One week is good.

23 THE COURT: Okay. Get back to me in a week.
24 If you have a proposed order, that's great. You know, I
25 am -- I don't care personally whether you do it by means

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1 of a settlement, the terms of which are on the record and
2 so ordered by the Court or a private settlement agreement
3 and the stipulation of dismissal filed in court. Either
4 one is fine, as far as I'm concerned and I'm sure it's
5 acceptable to Judge Weinstein.

6 MR. LEHMAN: We want it, in fact, he -- Judge
7 Weinstein -- I don't want to use a pronoun for him, Judge
8 Weinstein said that it would be ordered by the Court.

9 THE COURT: Okay. And that's acceptable to
10 both sides. Okay. So put in the settlement agreement to
11 be so ordered within a week and if a dispute arises,
12 obviously contact chambers and we'll set up a conference
13 to try and hammer it out.

14 MR. LEHMAN: Very well.

15 THE COURT: Okay. Anything else I can do for
16 you gentlemen today?

17 MR. LEHMAN: Oh.

18 THE COURT: Mr. Malina?

19 MR. MALINA: I think there's a status
20 conference presently scheduled --

21 THE COURT: Yes.

22 MR. MALINA: -- for about a week or two from,
23 you know, hence. I forget the exact date.

24 THE COURT: It's on December 19th at 10
25 o'clock. I'd like to keep that on the calendar for now

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1 because if something gets in the way of your settlement
2 agreement, perhaps we can discuss it then.

3 MR. MALINA: Okay, yeah.

4 THE COURT: Obviously, if you get the
5 settlement agreement in before that, I am going to cancel
6 it.

7 MR. MALINA: Very well.

8 THE COURT: Okay? All right. So I will expect
9 -- today's the 9th. So I'll expect to have something
10 filed by the 16th. Okay. Great. Glad you were able to
11 make progress and look forward to hearing from you next
12 week. Have a good day, everybody.

13 MR. LEHMAN: Thank you.

14 MR. ZILBERBERG: Your Honor, thank you very
15 much.

16 THE COURT: Sure.

17 MR. ZILBERBERG: Thank you.

18 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 10th day of December, 2014.


Linda Ferrara

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